

## Concept of Dower in Hinduism and Islam: A Comparative Study

---

\*Sobia Khan

\*\*Abdul Quddus Suhaib

### **Abstract**

*In Sanskrit Dower is referred to as yautaka, or the material gifts of money or goods that confirm the union of those who are yuta or joined together in matrimony. In arsha form of marriage in ancient India a girl was given away on her father receiving a bride price called sulka, which was a form of compensation to the girl's parents for the loss of their daughter. In another form the bride's father received a pair of kine. The custom fell in to disuse by about the early middle ages, when it came to be regarded as disputable, but it is still practiced clandestinely where, for example a wealthy old man who desires a young bride will pay her father a large sum of money as a settlement for his daughter. In Islam Dower is a sum of money or other property which the wife is entitled to receive from the husband in consideration of marriage. All schools of law agreed that the dower is one of the conditions of validity of marriage and an agreement to forgo it is not permitted. They based this ruling on the Qur'an verses: And give unto the women [whom you marry] a free gift of their marriage portions (saduqat) and so wed them by permission of their folk, and give unto them their portions (ujurabunn) in kindness (4:4). Here the command to give the wives their saduqat and ujur, translated as marriage portions and portions respectively.*

**Keywords:** Dower in Islam, Dower in Hinduism, Islamic Law, Social Impact

### **Introduction:**

Dower in different communities have a different shapes. The terms "dowry" and "bride price" are sometimes used to translate *mahr*, but Mahr differs from dowries in many other cultures. A dowry traditionally refers to money or possessions a woman brings forth to the marriage, usually provided by her parents or family; bride price to money or property paid by the groom or his family to the parents of a woman (but not to the woman herself) upon the marriage. Islamic meaning of Mahr, as "dower" refers to the payment from the husband or his family to the wife To compare and analyze the dowry, and dower laws specific differences between the Hindu. Muslim religious and personal laws and highlights in Research

---

\*Ph.D Scholar, Department of Islamic Studies, Bahauddin Zakariya University, Multan.

\*\*Chairman, Department of Islamic Studies, Bahauddin Zakariya University, Multan.

### **Definition of Dower:**

“**Dower** in Sanskrit is referred to as yautaka, or the material gifts of money or goods that confirm the union of those who are yuta or joined together in matrimony. marriage in ancient India a girl was given away on her father receiving a bride price called sulka, which was a form of compensation to the girl’s parents for the loss of their daughter. In another form the bride’s father received a pair of kine., for example a wealthy old man who desires a young bride will pay her father a large sum of money as a settlement for his daughter.”<sup>(1)</sup>

### **Kanyadana:**

“Kanyadaan literally translates to 'gift of a virgin.' Traditionally, when the father of the bride gives his daughter over to her groom's family her chastity was thought to bolster the prestige of the groom's parents. religious connotation of the Kanyadaan is poetic - as part of the ceremony, the bride accepts her husband as a manifestation of Vishnu and the groom accepts his bride as an incarnation of Lakshmi or, in some cases a gift from the gods. The giving of their daughter as a gift to Vishnu is also supposed to increase the honor of the bride's parents and wash them of their sins The bride is given to the groom on the condition that he helps her achieve her *dharma*, *artha*, and *kama*.”<sup>(2)</sup>

### **Kanyesulka**

“The term sulka, is that it involves sale and purchase of a thing. Medini quoted here specifies the meaning as varcid arthagrahanam. Sulka is understood to mean price, then the practice of kanyei-s`ulka is, the social worth of a girl paid for in terms of wealth to the relatives. The former meaning of `price' involves the idea of sale and purchase of a girl. This is a relic of the practice of kanya-s`ulka. It is significant that the Sanskrit word "papa" refers to both the condition that is laid down and the price (malya) that is demanded”<sup>(3)</sup>

Thus the stridhana, once a woman’s property given voluntarily by her father is now a boy’s prerogative to demand. It is set in a bargain made between two families before the marriage, and even after the marriage the expectation of more continues.<sup>(4)</sup>

### **Historical Background:**

From about the 4<sup>th</sup> century B.C., it was specified that girls should receive the stridhana and sulka from the boys or their families. The stridhana ( lit. A woman’s wealth), as it is still know among Hindus, consisted of a fixed sum of maintenance, ornaments, and clothes. The sulka remained undefined, with later lawgivers interpreting as brideprice, Both stridhana and sulka as a security deposit against premarital defents of the partners. after the wife’s death, the stridhana went to her children, husboand, or his family, and the sulka to her partnatal family.

Whether the marriage was sacred or secular affected a woman’s absoluter right over her property. In sacred marriage, a husband had limited rights over his wife’s property; in religius marriage he had none.. The queens, princesses and

aristocrats had a great deal of wealth but the poor women worked as servants in places or in agriculture, basket-making and handicrafts. A very important influence on the status of the Hindu woman has been the Manusmriti, a granth composed by many somewhere between 200 BC to AD 200 and committed to writing in twelfth century AD. In the beginning of his book he writes: "Brahma separated his body into two parts; from half he created man and from the other part woman. She is, therefore, born equal. Gods reside where women are respected and where they are insulted all Endeavour is useless." Women are also seen by Manu, as in the Jatakas, as seductive, who blame men and should be avoided in seclusion. Women lead astray not expected to look at women while adorning themselves, dressing or relaxing. From infancy to adolescence, the girls child was not entitled to ceremonies with mantras. There is no mention here of upnayana being performed for girls or the girls going through a period of Brahmacharya in the guru's ashram.<sup>(5)</sup>

### **Concept of Kanyadana / Stridhan in Manusmriti Chapter/3:**

**Manusmritilaw**20. "Now listen to (the) brief (description of) the following eight marriage-rites used by the four castes (varna) which partly secure benefits and partly produce evil both in this life and after 24. "The sages state that the first four are approved (in the case) of a Brahmana, one, the Rakshasa (rite in the case) of a Kshatriya, and the Asura (marriage in that) of a Vaisya and of a Sudra".) 27. "The gift of a daughter, after decking her (with costly garments) and honouring (her by presents of jewels), to a man learned in the Veda and of good conduct, whom (the father) himself invites, is called the Brahma rite". 28. "The gift of a daughter who has been decked with ornaments, to a priest who duly officiates at a sacrifice, during the course of its performance, they call the Daiva rite". 29. "When (the father) gives away his daughter according to the rule, after receiving from the bridegroom, for (the fulfilment of) the sacred law, a cow and a bull or two pairs, that is named the Arsha rite". 30. "The gift of a daughter (by her father) after he has addressed (the couple) with the text, 'May both of you perform together your duties,' and has shown honour (to the bridegroom), is called in the Smriti the Pragapatya rite." 31. When (the bridegroom) receives a maiden, after having given as much wealth as he can afford, to the kinsmen and to the bride herself, according to his own will, that is called the Asura rite" 32. "The voluntary union of a maiden and her lover one must know (to be) the Gandharva rite, which springs from desire and has sexual intercourse for its purpose". "The forcible abduction of a maiden from her home, while she cries out and weeps, after have been slain or wounded and (their houses) broken open, is called the Rakshasa rite"<sup>(6)</sup>

The epic are same as Vedic thinking. It is also correlated with the Upanisads and Manu. Only they are different in color modified,, exaggerated and to some extent fanciful. The poet has described five systems of marriage. Brahma, Prajapati, Gandharva, Asura and Rakshasa. Prajapati where the guardians of the maiden create a favorable position of the bridegroom before the marriage by giving money and property. Such marriages are fair among Brahmans and Kshatriyas.<sup>(7)</sup>

"Mahabharata has pictured it in Anusasan parvan. It is seen that the king Kuntobhoja gave profuse wealth to Pandu after his marriage with Kunti. This act

represents marriage presentation in inner essence it is nothing but marriage dowry. There are other such instances in the epic. This is one aspect of dowry system. In other aspect it seems to be marriage tax.<sup>(8)</sup>

“The arsa from of marriage described by manu “The gift in due from of a maiden is called the Arsa rite .When a pair or two called have been legally received from the bridegroom this form of marriage the price is fixed,”<sup>(9)</sup>

Arsa marriage states also that the gift given by the son in law is not for making any profit but not for religious purpose  
“ancient Indianan Law” has defined this marriage as sham helater on pointed out that price being always same and not high in comparison with the price and paid according to the Asura Vivaha could not be real price for the girl”<sup>(10)</sup>

Returning back to Rgveda System of procuring wife through payment bride-price may be trade in hyma where Vajamata an undesirable suitor had to please the father of the bride through heavy Payment. Parasara gives a reference to the custom of marriage by purchase the epics much attention is given to the subject. Thus in the Ramayana the payment of heave bride price was made to guardian of Kikuyu for the marriage with King Dasarath. Again the reader of this book will probably be surprised to learn threat great epic Mahabharata in one place mentions that a great amount of wealth should be given in the purchase of the maiden and that will be act as a sort of allurement for the Kinsmen of the bride that Madri was secured for King Pandu by giving money Lavishly to her father the King of Madra. Similar interpretation of it is also furnished by the critical edition of Mahabharata<sup>(11)</sup>  
“In Prajapati system of marriage such tax would be payable as a contract of proposed marriage. But such tax paid or taken does not validate the final marriage. It is only a contract between the parties concerned. When such tax is taken by the father of the would be bride it would be binding on him he cannot give his daughter in marriage with another unless he refunds the same. The prayer of such tax would have full right on the would be bride. But in case the marriage is delayed for long absence of the proposed bridegroom, they would be bride for the welfare of the tax payer may engage herself for production of child by union with other man but in no way she can be marriage. These are main facts as we find in the Mahabharata relating to marriage linked up with other connected aspects.”<sup>(12)</sup>

The practice is thus valid for such people because they know the relatives make a request for s'ulka. As s'ulka is given by the husband, so in exchange the girl is given. It is not the transfer of a girl as a means of procreation but as one having social value. Sulka given here is not so in the literal sense of the word and it is not a vikraya either. The reason for this is that it is an old practice that when something is taken, something has to be given (pratigrhya bhaved deyam esa dharmah sanatanah). Further in the same adhyaya it is said, if anybody looks upon s'ulka as kraya-vikraya, they are not dharmavidah janci (they do not know what the real practice is about) and such people should not follow this practice of varan saction should not be

equated with the sale and purchase of a *dasi*. While in *kanyasulk* the transaction is praiseworthy because the worth of a girl as an individual is recognised, in case of a *deisi* it is an outright sale and purchase and the master has full power over her as labour power as well as a person.

The proper term to use in "wealth" and not "price".<sup>13</sup>

19 century In societies in which women participate in social production, the practice of *kanyasulk* amounts to purchasing the essential services of a girl by the husband and his tribe. Hence *kanyasulk* really represents an exchange of two kinds of wealth: the money and the essential services of the girl.

Altekar says: "The price paid by the bridegroom was originally a compensation to the bride's family for the loss of her services" Viewed in this light, the practice of *kanyasulk* is far from being dishonorable since it is an acknowledgement of the woman's important and equal role in the family. Altekar says: "it would be disgraceful for a girl and her family, if she is given in marriage for nothing" .The norms of the sociologists demand that if we want to know anything about our ancestors, we should examine the practices of the present day tribals."<sup>14</sup>

Lastly we may discuss the dowry system and law of inheritance jointly in the light of moral value. The tradition of dowry is very old one. We find its implication in the Vedas and other Hindu scriptures. It was customary especially in the royal family to give matrimonial presentations. The presentations mainly consisted of ornaments and jewelleries. Besides ornaments, horses, elephants, chariots, slaves and other valuable things used to be offered.

The instances of Kunti, Draupadi and Uttara prove the fact. This it is seen that this system was a time honored fashion. The system continued for thousands of centuries and is still continuing in our present day society. Very recently it has been banned by law. But all may perhaps agree with me that the tradition is still going on in full swing. This system must have some moral values otherwise it cannot be survived so long and so widely.<sup>15</sup>

In Hindu society sons and daughters are in equal status. They are equally loved by parents. Sons after marriage remain in father's house whereas daughters go to father in law house for good. In those days daughters had no right to inherit the riches of their father. So probably it was considered by promoter of this tradition to fill up this financial gap. The dowry system was the outcome of that thinking. Thus on the point of equity and justice this tradition had social and moral value. And the motive was good and virtuous. So the action followed that is the dowry system must be good and virtuous. But one thing must be remembered that in those days it was the good wish of the parents to their daughters and voluntary in nature. No compulsion was imposed in its application. But in time, in our present day society, it has become a compulsory fashion. Undue pressure on the poor parents to compel them to arrange dowry for the marriage of daughter is indeed a brutal affair.

### **Mahr Definition:**

Mahr is that amount of mans' substance which in case of nikah falls due on the husband for the gratification of his sex urge This may became due on fixation of mahr or after nikah.<sup>(16)</sup>

Property moveable or immovable and its lawful usufruct can be subject of dower

### **Literal Meaning of the Terms Used in the Quran for (Dower):**

The meaning of the Quran terms saduqah, nihlah, ajr and farieza is made clear by the following excerpts from the lugat and other works:

Saduqah: Saduqah is a derivative of Sadaq, written by some as Sadk. Following excerpts from the lugat help to know its literal meaning:

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبَّنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا<sup>(17)</sup>

**Sadk** (v.n. of ) speaking the truth, being true, just, honest, up rig ht ...

Sidk, truth, veracity, sincerity, praise

**Ajr** : Ajr is Actually a word of Akkadian language which has been assimilated by Arabic language through Arami language. This is used in two senses. Both the uses of the term are found in Quran

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاثَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ<sup>(18)</sup>

### **Historical Background:**

In the pre Islamic period, the mahr was handed over to the wali. the father, or brother or relative in whose guardianship the girl was. Here the original character of the marriage by purchase is more apparent. In earlier times the bride received none of the mahr. What was usually given to the women at the betrothal is the sadak, the mahr, being the purchase price of the bride, is given to the wali.

But in the period shortly before Muhammad, the mahr, or at least a part of it, seems already to be given to the woman. According to the Kuran, this is already the prevailing custom. By this amalgamation of mahr and sadak the original significance of the mahr as the purchase price was weakened and became quite lost in the natural course of events. There can be no doubt that the mahr was originally the purchase price. But the transaction of purchasing in course of long development had become a mere form. The remains, however, as they survived in the law of marriage in Islam, still bear clear traces of a former marriage by purchase.

### **The Raddul-Muhtar says.**

قَالُوا وَمَقَادُهُ صِحَّةُ تَزْوِجِهَا عَلَى أَنْ يُجَدَّمَ سَيِّدَهَا أَوْ وَلِيِّهَا كَقِصَّةِ شُعَيْبٍ مَعَ مُوسَى كَصِحَّتِهِ عَلَى خِدْمَةِ عَبْدِهِ أَوْ أَمَتِهِ أَوْ عَبْدٍ الْغَيْرِ بِرِضَا مَوْلَاهُ أَوْ خُرْ آخِرَ بِرِضَاةِ (و) فِي (تَعْلِيمِ الْقُرْآنِ) لِلنَّصِّ بِالِاتِّبَاعِ بِالْمَالِ، وَبَاءُ «زَوْجُكَ بِمَا مَعَكَ مِنَ الْقُرْآنِ»<sup>(19)</sup>

### **Mahr according to Islamic Jurispondences:**

Under the Hanafi and Maliki law by valid retirement or Khilwat-ul-sahih is meant the actual retirement of the husband and wife into the nuptial chamber for matrimonial intercourse. But if there is some legal or physical impediment to connubial intercourse, the retirement is not valid. Where no dower is fixed or it is

stipulated that there should be no dower, nevertheless marriage is valid and the customary dower is obligatory.

" وأقل المهر عشرة دراهم " وقال الشافعي رحمه الله ما يجوز أن يكون ثلثا في البيع يجوز أن يكون مهرًا لأنه حقها فيكون التقدير إليها ولنا قوله عليه الصلاة (20)

"The Fatawa Alamgiri places Khilwat-us-sahih in the same category as actual consummation in respect of some rights and duties arising from the marriage the namely the confirmation of dower, paternity, iddal and maintenance but not as regards repudiation and inheritance. Under the Shafi and the Shiah law actual consummation alone creates the rights and duties which spring from the marriage contract. According to the Hanafi law the minimum dower is fixed at ten dirhems, and the Maliki law has fixed three dirhems as the lowest sum.

### **The Fatawa Alamgiri observes and refers to the Nahrul Faik:**

أَدَقُّ مِقْدَارِ الْمَهْرِ وَبَيِّنَانِ مَا يَصْلُحُ مَهْرًا وَمَا لَا يَصْلُحُ مَهْرًا أَقَلُّ الْمَهْرِ عَشْرَةُ دَرَاهِمٍ مَضْرُوبَةٌ أَوْ غَيْرُ مَضْرُوبَةٍ حَتَّى يَجُوزَ وَزُنْ عَشْرَةَ نَبْرًا (21)

**All property moveable or immovable and its lawful usufruct can be subject of dower.**

### **Mahr in the Family of the Prophet (Pbuh):**

"The Prophet (SAW) did neither give his daughter in marriage nor did he marry any of his wives on a mahr higher than 12 (twelve) auqiyahs and a nush. 'Nush' means one half of an auqiyah. One auqiyah is 40 dirhams and one nush is twenty dirhams and thus it (the mahr) amounts to 500 (five hundred) dirhams."

### **Prompt and Deferred Dower:**

Demand called Mahr and another payable at death or dissolution of marriage by divorce called Mahr Muajjal. Having regard to the time when it bedclothes payable dower may be mua'jjal O, that is, immediately eligible or prompt, or muajjai that is, deferred. Whether a dower should be entirely or in part exigible or deferred depends on the contract of the parties

There are two ways of presenting mahr to the bride. One is to hand it over at the time of the marriage, in which case it is known as mahr mu'ajjal, or promptly given dower. (The word mu'ajjal is derived from 'ajilah, meaning "without delay."

The Hedaya says:

" وللرَّأْسِ أَنْ تَمْتَنَعَ نَفْسُهَا حَتَّى تَأْخُذَ الْمَهْرَ وَتَمْتَنَعَ أَنْ يُخْرِجَهَا " أَيِ يَسَافِرُ بِهَا لِيَتَعَيَّنَ حَقُّهَا فِي الْبَدَلِ كَمَا تَعَيَّنَ حَقُّ الزَّوْجِ فِي الْمَبْدَلِ وَصَارَ كَالْبَيْعِ " وَلَيْسَ لِلزَّوْجِ أَنْ يَمْتَنَعَ مِنَ السَّفَرِ وَالْخُرُوجِ مِنْ مَنْزِلِهِ وَزِيَارَةِ أَهْلِهَا حَتَّى يُوفِّيَهَا الْمَهْرَ كُلَّهُ " أَيِ الْمَعْلُومِ مِنْهُ أَنَّ حَقَّ الْحَبْسِ لَا اسْتِيفَاءَ الْمُسْتَحَقَّ وَلَيْسَ لَهُ حَقُّ الْاسْتِيفَاءِ قَبْلَ الْإِيفَاءِ " وَلَوْ كَانَ الْمَهْرُ كُلُّهُ مُؤَجَّلًا لَيْسَ لَهَا أَنْ تَمْتَنَعَ نَفْسُهَا " لِإِسْقَاطِهَا حَقَّهَا بِالتَّأْجِيلِ كَمَا فِي الْبَيْعِ وَفِيهِ خِلَافٌ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ وَإِنْ دَخَلَ بِهَا فَكَذَلِكَ الْجَوَابُ عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَقَالَ لَا لَيْسَ لَهَا أَنْ تَمْتَنَعَ نَفْسُهَا وَالْخِلَافُ فِيمَا إِذَا كَانَ الدَّخُولُ بِرِضَاهَا حَتَّى لَوْ كَانَتْ مَكْرَهَةً أَوْ كَانَتْ صَبِيَّةً أَوْ مَجْنُونَةً لَا يَسْقُطُ فِي حَقِّهَا الْحَبْسُ بِالِاتِّفَاقِ وَعَلَى هَذَا الْخِلَافِ الْخُلُوءُ بِمَا بِرِضَاهَا وَيَتَنَبَّى عَلَى هَذَا اسْتِحْقَاقُ النِّفْقَةِ لَهَا أَنَّ الْمُعْقُودَ عَلَيْهِ كُلُّهُ قَدْ صَارَ مُسْلِمًا إِلَيْهِ بِالْوَطْءِ الْوَاحِدَةِ وَالْخُلُوءُ وَلِهَذَا يَتَأَكَّدُ بِمَا جَمَعَ الْمَهْرَ فَلَمْ يَبْقَ لَهَا حَقُّ الْحَبْسِ كَالْبَائِعِ إِذَا سَلِمَ الْبَيْعَ وَلَهُ أَنَّهَا مَنَعَتْ مِنْهُ مَا قَابَلَ الْبَدَلَ لِأَنَّ كُلَّ وَطْءَةٍ تَصْرِفُ فِي الْبَضْعِ الْمُحْرَمِ فَلَا يَخْلَى عَنِ الْعَوَضِ إِبَانَةً لِحُظْرِهِ وَالتَّأَكُّيدَ بِالْوَاحِدَةِ لِحَالَةِ مَا وَرَاءَهُ فَلَا يَصْلُحُ مَزَاحِمًا لِلْمَعْلُومِ ثُمَّ إِذَا وَجَدَ آخَرَ وَصَارَ مَعْلُومًا تَحَقَّقَتْ الْمَزَاحِمَةُ وَصَارَ الْمَهْرُ مُقَابِلًا بِالْكُلِّ كَالْعَبْدِ (22)

A wife has the right, until she receives the prompt portion of her dower to refuse to surrender herself to her husband, or to go with him on a journey *Mahr mu'ajjal*, however, can take the form of some service performed by the husband, one notable example of which was the grazing of cattle by the Prophet Moses. When Moses left Egypt for Madyan, he married Safoora, the daughter of the Prophet Shu'ayb. His *mahr muajjal* was settled and paid off by binding himself to grazing the cattle of his elderly father-in-law for a period of eight to ten years. Only after performing this service for a full ten years did he leave Madyan for Egypt.<sup>(23)</sup>

### The Opinions of Jurist:

The system of dower favored by the shari'ah entails immediate handing over of mahr. This was the practice followed by all of the Prophet's Companions. Deferred dower is an alternative, but is not ranked equal in merit of a prompt discharging of this responsibility. It is simply a form of concession made to those who are unable to meet the requirements of mahr at the time of marriage. four schools of jurisprudence have been established, known as Hanafi, Shafi'i, Hanbali and Maliki.

All of these schools agree that delay in handing over the dower, whether in full, or in part, is lawful, provided that the period fixed for payment is not indefinite. The Shafi'i also stipulate that the "period of payment should have been fixed in time

قَوْلُهُ تَعَالَى لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً لَمَّا دَخَلْتُمْ عَلَى النِّسَاءِ أَنْ تَكُونَ بِمَعْنَى الْوَاوِ فَيَكُونُ شَرْطُ وَجُوبِ الْمُنْعَةِ الْمَعْنِيَّتَيْنِ جَمِيعًا مِنْ غَدَمِ الْمَيْسِرِ وَالتَّسْمِيَةِ جَمِيعًا بَعْدَ الطَّلَاقِ وَهَذِهِ الْآيَةُ تَدُلُّ عَلَى أَنَّ لِلرَّجُلِ أَنْ يُطَلِّقَ امْرَأَتَهُ قَبْلَ الدُّخُولِ بِمَا فِي الْحَيْضِ وَأَنَّهَا لَيْسَتْ كَالْمَدْخُولِ بِمَا لِإِطْلَاقِهِ إِبَاحَةَ الطَّلَاقِ مِنْ غَيْرِ تَفْصِيلٍ مِنْهُ بِحَالِ الطَّهْرِ دُونَ الْحَيْضِ وَقَدْ اخْتَلَفَ السَّلَفُ وَفَقَّهَاءُ الْأَمْصَارِ فِي وَجُوبِ الْمُنْعَةِ (24)

However there is no difficulty where the parties have explained and agreed how much of the mahr is to be prompt and what portion of it is to be prompt and what portion of it is to be deferred, but when nothing is mentioned in the contract of marriage, then according to the accepted view that portion should be declared prompt which is established by usage and custom with reference to the woman's status.. According to the Shiah law the whole dower is considered to be prompt when there is no specification in the marriage contract.

### Condition of or Mahr-ul-Misl:

The customary dower or mahr-ul-misl varies; therefore, in amount according to the social position of the, woman's qualifications, the circumstances of the time, and the background of the family, the wealth of her husband, her own personal conditions of society surrounding her. No fixed rule can be laid down as to the amount of dower in any particular case. When, 'therefore, it is said, that the dower of a woman, where no mahr is stipulated or specified at the time of marriage, should be the "dower of her equals," 'it is only intended to imply, that approximation may be made 'by observing the custom which has Prevailed in her



father's family, provided she does not differ in intellectual capacity or personal attraction from the female relations with whom she is compared

"Among the Shiah, dowers are of three kinds, viz., (a) the mahr-i-sunnat, or traditional dower; it refers to the amount of dower adopted by the Prophet, and is said to be 500 dirhems; (b) the mahr-ul-misl; and (c) the mahr-i-mysat'iina, the specified dower.<sup>(25)</sup>

**Mahrul Misl becomes due** in case of shighar, and it is this: a man marries his daughter or sister to another, on the condition that that other would marry for instance. his daughter or sister to him, each contract being the consideration for other, and this according to tradition is forbidden, in as much as there is no dower (in such a contract), consequently we have made mahrul payable in such a case and thus there remains no shighar.

**(mahrul mist becomes due) in case the dower fixed is rendering service for a year by a free husband,** to a free or slave wife, because it is un-natural. It has been so stated (by the jurists), and the result of their opinion is that it is valid to marry a wife upon this, that the husband would serve her master or guardian; for example. take the story of Shoaib with Moses. \*just as it is valid to marry a wife upon this that the husband's male or female slave or the slave of another man with his master's consent, or some other free man with his own consent, would serve the wife.<sup>(26)</sup>

### **Dowry and Consummation:**

After consummation, the wife becomes entitled to full dower, and before consummation only half, or a mere present in case of separation before consummation.

After the payment of dower a woman comes under the legal control of her husband. The non-payment of dower creates interesting legal effects, namely, the wife may refuse herself to her husband.

### **Dower of slave girl Surah Al-Nisa' Verse 25.**

وَمَنْ لَّمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ بِأَذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ<sup>(27)</sup>

And the one of you who has not the power that he may marry Muslim free-women in wedlock he should marry Muslim handmaids that your right hands own. and God knows well your Muslimhood. You are one altogether, so marry them by the leave of their owners and give them their dowry-gifts according to convention and custom-women coming in wedlock, neither licentious, nor given to secret romance. But when they come in proper wedlock, if they commit an act of indecency, they shall be liable to half the punishment of free women.that provision is for those of you who fear to fall in trouble. And if you control, it is better for you. And God is Forgiving, Kind.

“Tafseer – e – usman(Allama Shabbir Ahmad Usmani) write about marriage and dower of slave girl .If a man has no enough means to provide a freewoman and is unable to bear the dowry-gift etc. he is allowed to marry a handmaid whose burden would be definitely less. But that man who can marry a

freewoman, it is not lawful for him according to Imam Shafaea (امام شافعى) to marry a handmaid. According to Imam Abu Haneefa it is undesirable (مكروه تنزيهى). According to most of the Scholars the handmaid should be Muslim. According to Imam Abu Haneefa a Muslim handmaid is preferable. If the handmaid is a Christian or a Jew she is also lawful. But in the presence of a free wife, Niakah with a handmaid is unanimously unlawful.<sup>(28)</sup>

This verse has raised the moral standard of the slave-women in the society, who were generally despicably seen by the free-men. The Muslims are instructed not to dislike the slave-women. They can marry them if necessity arises. Free-men and slave-women are all the Children of Adam and the Followers of Islam. If some handmaid is married, her dowry-gift should be given as it is given to the free women, though it may be less. They should also be dealt with kindness. Free-men should not be averse to the slave-girls because they are also human beings and deserve human treatment. Allah knows the Islam and Eman of every soul. A slave-woman may prove a better Muslim, a better wife and a better mother than a free-woman. By this verse the hatred towards the slaves is crossed and the practice of adultery is totally extirpated. Adultery with the slave-girls is never allowed. If a slaved-girl commits lewdness she shall be given half of the punishment given to a free-woman (adul-tress). The punishment of a freewoman or freeman before marriage is hundred flogs and after consummation of marriage is pelting (رجم). The slave-woman guilty of fornication. Before or after marriage, shall be sentenced to fifty flogs.

### Marriage and Dower:

Tafsir Ishraq Al-Ma'ani Syed Iqbal Zaheer

Surah Al-Nisa' Verse 24

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كِتَابَ اللَّهِ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَنْتَعُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ قَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ أَجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَايَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ .

Also (forbidden unto you are) women who are (already) married, save for what your right hands possess. (Such is) Allah's legislation for you. However, lawful unto you are all (other categories) beyond those (mentioned herewith) – that you might aim with your wealth honest wedlock and not debauchery. Therefore, such of them as you enjoy thereby, hand them over their marriage portion as a duty.<sup>103</sup> and there is no sin upon you in agreeing together (with your spouses), after the dower (was settled). <sup>104</sup> surely Allah is All-knowing, All-wise.<sup>(29)</sup>

The term “muhsanah” signifies literally “a woman who is fortified [against unchastity]”, and carries three senses: (1) “a married woman”, 2 “a chaste woman”, and (3) “a free woman” (Asad). Occurring as it does, there have been several interpretations to the word. The majority opinion is that those Muslim women are meant who are already married to someone (Au.)

Syed Iqbal Zaheer write mutta marriage and dower matter in Tafsir Ishraq Al-Ma'ani

Majid adds: "This repudiates extreme communist doctrine that, within the community, every woman may be the wife of every man, and any man could cohabit with any woman, as also the custom in many savage tribes of lending and exchanging wives. 'the custom of lending wives is well nigh universal among savages. The use of the word "savages" by the Encyclopedia is ironic, for in many parts of the civilized world today, such practices are not as scares as one would imagine (Au.).. Abu Said al-Khudri has reported (in a hadith of Muslim, Abu Daud and Nasa'i: Ibn Kathir). That the Muslims took pagan women as prisoners in the battle of Awtas (Ghazwah Hunayn: au.). They were uncertain about those women being lawful to them. Allah revealed this verse. Thus sexual relationship with them was declared lawful on condition of completion of one menstrual cycle prior to intercourse (Ibn Jarir).<sup>(30)</sup>

Ibn Abbas, Ubayy b. Ka'b, Sa'id b. Jubayr and Suddi have, on the basis of this verse, argued about the validity of muta'ah marriage. But the rest of the Companions were of the opinion that muta'ah marriage, which was more than once made lawful and then declared unlawful during the life of the Prophet, is now invalid and unlawful. The consensus is based on a Quranic verse as well as several ahadith. The verse in question is "Those who guard their chastity, save against their wives or what their right hands possess, such indeed are free of blame." One of the ahadith is in the Sahihayn which reports' Ali as saying that, "The Prophet forbid muta'ah marriage and the meat of the domestic donkey on the day of Khyber campaign." Muslim has another hadith which reports that on the day of the fall of Makkah the Prophet (saws) said: "People. I used to allow you muta'ah marriage. But Allah has now made it unlawful until the Day of Judgment. Therefore, if there is anyone who has contracted such a marriage, let him terminate it. But do not take back whatever you have given them." Muslim has another report according to which muta'ah was declared unlawful during the Farewell Hajj (Ibn Kathir). Umar (R.A) in fact is reported to have said: "I shall not find a man contracting a muta'ah marriage but shall stone him to death." (Kashshaf)

About Ibn Abbas himself, it is reported that a little before his death he withdrew his opinion about the validity of muta'ah marriage when he came to know of the abrogating commandments (Kashshaf, Shawkani). Muslim's hadith shows that it was Ali who convinced him of the abrogation.

Shafi' comments: Indeed, there is a narration to this effect by no less a person than Ibn'"Mufti Shafi also writes: as the muta'ah marriage, in which one marries for a short while by paying a price and spelling out the term "muta'ah", temporary marriage is also unlawful, which is to fix a period (even if of several years: au.) after which the pair would part company.. That is, there is no sin upon either of the two, husband and wife, if after marriage they agree upon either increase or decrease in the dower amount, or on deferring its payment, or the wife forgiving it altogether (Ibn Jarir).

### **Conclusion:**

This is quite contrary to Hindu system of marriage where girls are to pay huge sums to husband in consideration of marriage. This principle leads to celibacy of young girls. The thought of Hindu culture the gift, indeed, a mystic power is attached which establishes community; giver and receiver participate in the gift and, therefore, in each other. The gift is powerful, it has binding force, and the man who receives, or buys, acquires something of the giver's, or seller's being together with the object transferred. It would, therefore, be dangerous if he did not return the gift, if he did not enter into a relation of exchange's. These are the reasons why most people make a strong protest against regarding the gift of a 'bride-price' as a preformed commercial transaction **Marriage as a transfer of dependence.** In systems in which the females are legally and economically dependent within a family hierarchy, the juridical essence of marriage is the transfer of the woman from control by her own families, countries, and religions exhibit this principle in a variety of forms, for example, in certain kinds of Roman the traditional, in the Hindu marriage based on the joint family,

Islamic law gives advantage to woman and increase their prestige and independence. Dower is a great check for free use of husband's oppression and Christian women have 50% share all property of belong to husband and wife. The law of England recognize as community property we conclude Islamic way mahr is full authority of woman to use it in time of marriage, during marriage and after husband death.

These four conditions make us believe that Islam has got a very wise standard of morality and modesty. The liberty of women is sanctioned in their most important chapter of social and family life. The women have been given full liberty of conscience and will, and men are forbidden to curb their inner will. The women are not commercial commodities that they are sold in the market of lewd dacoits. In the Days of Ignorance the women were placed in a very sorrowful position. The Dark ages of the world did not do justice to woman; Europe did never do justice to woman. John Stuart Mills was grieved at the subjugation of woman in British Empire and in Great Britain. But when the European thinkers sought to liberate woman from slavery and subjugation they gave her open license. Indeed the object of private lust was transformed into the object of public lust. They were wild in visualizing the capacities of woman, her modesty, her propriety and her tender propensities. It is only Islam which gave woman her right position in the society. Islam made woman the Queen of the House. And liberated her from the lowly desires of man. She is given a great honour by Islam in that her rights, her reverence and her liberty are preserved by law, by the Quranic Law. By the Divine commandments unchallengeable by human monsters.

The Mehr (Dowry-gift) becomes obligatory after meeting privately or consummation. When the man derived benefit from the woman now it is beneath

morality to take anything from the woman out of the dowry-gift apportioned. Of course, before meeting privily if the woman is divorced unfortunately, then half of the dowry-gift shall be given to the woman. If the marriage becomes void due to woman before consummation, then no dowry-gift shall be given to the woman

### References:

1. Benjamin Walker "Hindu World Encyclopedia Survey of Hinduism" Volume I (London: George Allen UN win LTD), p.290
2. Maria Seth "Woman and Development the Indian experience" Sage Publication (London: New Delhi India, Thousand asks), p.23
3. Negendra Kr, Singh "Encyclopedia of Hinduism" Vol. 7 Centre for Internationals Religious Studies & Anmol Publications PVT Ltd. (India: New Delhi,1822)
4. Edwin R.A Seligman "Encyclopedia of Social Sciences" Volume V. (New York: The Macmillan Company 1962), p.240
5. Sunita Sharma "Woman and Religion" (A.B.D Publisher Jaipur in DIA 2007), pp.95-96
6. Chapter No. 9 Mentor ), 20/32
7. Helen Tierney "Woman Studies Encyclopedia" Volume III (New York: Green Wood Press), pp.120-121
8. Nagendra KR, Singh "Encyclopedia of Hinduism" Volume 26 MAHABHARTHA, Anmol Publications PVT Ltd. (India: New Delhi), p.1160
9. Srikanta Misra "Ancient Hindu Marriage Law And Practice (Deep Deep Publisher New Delhi), p.74
10. Stembach in his 'juridical studies in ancient indiaaan Law' ( Delhi: Oxfort Publisher 1965 first ed), p.167
11. Srikanta mishra "Ancient Hindu Marriage Law And Practice" 9 (Deep Deep Publications), p.78
12. Margaret Cormack, Phel "The Hindu Woman" (Bombay: Asia Publishing House), p.163
13. D.H. Chaudari "The Hindu marriage at 1955 Second Edition "Eastern Law House PVT Ltd. (Law Publishers, India: Calcutta), pp.215-252
14. Negendra Kr, Singh "Encyclopedia of Hinduism" Vol. 7 Centre for Internationals Religious Studies & Anmol Publications PVT Ltd. (India: New Delhi), p.1822
15. William A. Darity Jr "International Encyclopedia of Social Sciences" 2<sup>nd</sup> Edition Volume, Macmillan References (USA: New York Thomson Gala 2008), p.441
16. Naseem Ahmad "Women in Islam ;volume ii(A.P.H. Publisng Corporation 5' (New Delhi Ansari Road Darya Ganj), p.645
17. Al-Quran, Al-Nisa:4
18. Al-Quran, Al-Nisa:24

19. المؤلف، ابن عابدين، محمد أمين بن عمر بن عبد العزيز عابدين الدمشقي الحنفي (المتوفى: 1252هـ) كتاب، رد المختار على الدر المختار الناشر، دار الفكر-بيروت الطبعة: الثانية، 1412هـ - 1992م ج 3، ص 10

20. المؤلف: علي بن أبي بكر بن عبد الجليل الفرغاني المرغيناني، أبو الحسن برهان الدين (المتوفى: 593هـ) كتاب: الهداية في شرح بداية المبتدي الناشر، دار احياء التراث العربي، بيروت، لبنان، ج 1، ص 198

21. المؤلف، لجنة علماء برئاسة نظام الدين البلخي كتاب، الفتاوى الهندية، الناشر، دار الفكر للطباعة، الثانية، 1310 هـ، ج 3، ص 302
22. المؤلف، علي بن أبي بكر بن عبد الجليل الفرغاني المرغيناني، أبو الحسن برهان الدين (المتوفى: 593 هـ) الكتاب، متن بداية المبتدي في فقه الإمام أبي حنيفة الناشر، مكتبة ومطبعة محمد علي صبح، القاهرة، ج 1، ص 64
23. LALEH BKHTIA” Encyclopedia of Islamic Law ;A Compendium of the views of the Major School” (ABC International Group ’INC), p.443
24. المؤلف، أحمد بن علي أبو بكر الرازي الجصاص الحنفي (المتوفى: 370 هـ) الكتاب، أحكام القرآن الناشر، دار إحياء التراث العربي، بيروت، تاريخ الطبع، 1405 هـ، ج 2، ص 236
25. Dr Muhammad Tahir Mansoori “Family Law in Islam Theory and Application”(sharih Academy International Islamic University Islamabad), p.72
26. B.M Dayal “ DURR-UL-MUKHTER”( Law Publishing Company Katchery Road Lahore pk )ss New Delhi 2006), p.60
27. Al-Quran, Al-Nisa:25
28. Allama Shabbir Ahmad Usmani English Translation by Mohammad Ashfaq Ahmad. “THE NOBLE QUR’AN Tafseer – e – usmani” Vol. I, (Pakistan: Darul-Isha’at Urdu bazaar Karachi), p.326
29. Al-Quran, Al-Nisa:24
30. Syed Iqbal Zaheer: Tafsir Ishraq Al-Ma’ani” Vol. II (India: Iqra Welfare Trust Bangalore), pp.221-222